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ANTHONY NEWLAND,

Petitioner,

v.

TONY EUGENE SAFFOLD,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE STATES OF NORTH CAROLINA, ALABAMA, ARIZONA, COLORADO, DELAWARE, HAWAII, ILLINOIS, KANSAS, MARYLAND, MASSACHUSETTS, MISSOURI, MONTANA, NEBRASKA, NEVADA, NEW JERSEY, OHIO, OREGON, PENNSYLVANIA, SOUTH CAROLINA, SOUTH DAKOTA, VIRGINIA, WASHINGTON, AND WYOMING AS AMICI CURIAE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the one-year limitations period for filing federal habeas corpus petitions set forth in 28 U.S.C. § 2244(d)(1) is tolled pursuant to 28 U.S.C. § 2244(d)(2) during the interval between a state court's denial of post-conviction relief and the filing of a "properly filed application" seeking appellate review of that denial.

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INTEREST OF THE AMICI CURIAE

Federal habeas corpus review necessarily involves re-examining state court proceedings and delaying the date on which the States and their citizens can feel confident that a criminal case has truly reached its conclusion. Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") in response to States' concerns that the federal habeas process was not sufficiently deferential to state court judgments and was overly protracted. To address the latter concern, Congress enacted 28 U.S.C. § 2244(d)(1), which sets a one-year limitations period for filing federal habeas petitions. The limitations period is, however, subject to tolling under 28 U.S.C. § 2244(d)(2), which is the statutory provision at issue in this case. The Amici States have a strong interest in the timely and orderly resolution of state cases and in the finality of criminal convictions. It is therefore important to the Amici States that the tolling provision not be interpreted in a manner that will undermine the one-year limitations period.

INTRODUCTION AND SUMMARY OF ARGUMENT

AEDPA's tolling provision provides that "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection." 28 U.S.C. § 2244(d)(2). The crucial question of statutory interpretation in this case is when a "properly filed application" for State post-conviction or other collateral review is considered to be "pending."

Several years ago, the Ninth Circuit interpreted § 2244(d)(2) as providing that the one-year limitations period set forth in § 2244(d)(1) is tolled from the time a prisoner's first state habeas petition is filed until the state supreme court rejects the prisoner's final collateral challenge. *Nino v. Galaza*, 183 F.3d 1003, 1006 (9th Cir. 1999), *cert. denied*, 529 U.S. 1104 (2000). In this case, the Ninth Circuit embellished that construction of § 2244(d)(2) by holding the same result obtains even where a prisoner unreasonably delays filing a habeas petition in the California Supreme Court, as long as that court rejects the petition on the merits in addition to "for lack of diligence." Pet. App. A 10-13. Following that decision, a panel of the Ninth Circuit held that the limitations period was tolled during another prisoner's delay of over four years between the trial court's denial of post-conviction relief and his filing an original petition for habeas relief with the California Supreme Court. *Welch v. Newland*, 267 F.3d 1013 (9th Cir. 2001), *mandate stayed*, 2001 WL 1309002 (9th Cir. Oct. 29, 2001).

The Ninth Circuit's interpretation of the tolling provision is contrary to § 2244(d)(2)'s language and thwarts the limitations and tolling provisions' purpose by allowing potentially indefinite tolling. The best reading of § 2244(d)(2)'s language—and the reading most consistent with the purpose of § 2244(d)—is that the one-year limitations period is not tolled during the interval between a state court's denial of post-conviction relief and the filing of a "properly filed application" seeking appellate review of that denial. *See generally Robinson v. Ricks*, 163 F. Supp. 2d 155 (E.D.N.Y. 2001) (adopting and thoroughly discussing this interpretation). In this case, that means that

neither the time period after the trial court's denial of respondent's habeas petition and before respondent's filing an original habeas petition in the California Court of Appeal, nor the time period after the court of appeal's denial and before respondent's filing an original habeas petition in the California Supreme Court, should toll the limitations period.[1]

A. Interpreting the tolling provision not to toll the interval between a state court's denial of post-conviction relief and the filing of a "properly filed application" seeking appellate review of that denial is consistent with § 2244(d)(2)'s language. This Court has defined the term "properly filed application" as an application that is filed and accepted in accordance with the applicable state rules governing filings. *See Artuz v. Bennett*, 531 U.S. 4, 8-9 (2000). This Court thus has made clear that the term "properly filed application" refers to the actual document a prisoner files in state court seeking post-conviction review. The term "pending" is commonly defined as something that

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[1] The Ninth Circuit held that respondent's petition in the California Supreme Court was "properly filed." Pet. App. A 12-13 n.8. Amici disagree. An application for relief is not "properly filed" when it is filed outside the time allotted under state rules and is denied "for lack of diligence," whether or not the state court also reaches the merits of the application. (Amici recognize this Court left that question open in *Artuz v. Bennett*, 531 U.S. 4, 8 n.2 (2000).) Because, however, the issue before this Court is the meaning of the term "pending," this brief assumes *arguendo* that respondent's petition was "properly filed." In light of that, this brief refers to two types of "properly filed applications"— *timely* ones, which are filed within the period allotted by state law for seeking review; and *untimely* ones, which are filed outside the time limit but are nonetheless addressed on the merits by the state court.

is incomplete, unsettled, or undetermined. Applying these two definitions, a "properly filed application" is no longer "pending" once the court in which the application was filed has ruled on it because there is nothing left incomplete, unsettled, or undetermined with respect to the application. There is thereafter no "properly filed application" that is pending in any state court unless and until the prisoner properly files another application in a higher state court.

A comparison of § 2244(d)(2)'s language to other provisions of AEDPA supports this reading. Section 2263(b)(2), for example, explicitly provides that the 180-day limitations period applicable to special habeas procedures in capital cases is tolled "from the date on which the first petition for postconviction review or other collateral relief is filed *until the final State court disposition of such petition.*" 28 U.S.C. § 2263(b)(2) (emphasis added). Similarly, § 2244(d)(1)(A) states that the one-year limitations period begins running from "the date on which the judgment became final *by the conclusion of direct review or the expiration of the time for seeking such review.*" 28 U.S.C. 2244(d)(1)(A) (emphasis added). The fact that these other provisions of AEDPA expressly include the entire review process, while § 2244(d)(2) does not, is strong evidence that § 2244(d)(2) does not include for tolling purposes the time period after a state court denies post-conviction relief and prior to the filing of a "properly filed application" seeking appellate review of that denial.

B. One of the main concerns that led to AEDPA's enactment was the lengthy delay that often occurred in the habeas process. AEDPA's limitations and tolling provisions were intended to address this problem,

thereby respecting principles of finality, while at the same time balancing concerns of comity and federalism by allowing prisoners to pursue their state remedies. Interpreting the tolling provision not to toll the "gaps" between stages of state court post-conviction review is consistent with AEDPA's purpose because such an interpretation speeds up the federal habeas process, but still allows prisoners who are reasonably diligent to exhaust their state remedies. Furthermore, such an interpretation can be expected to result in fewer protective federal filings because it is clear and simple, thereby removing the uncertainty that motivates protective filings.

C. The Ninth Circuit's conclusion that § 2244(d)(2) tolls the entire interval between a state court's denial of post-conviction relief and the *untimely* filing of an application seeking appellate review of that denial allows tolling for many months and years when no court is actually reviewing an application. This approach upsets the careful balance Congress struck among finality, comity, and federalism by placing little weight on Congress' goal of speeding up the federal habeas process. The court's conclusion that § 2244(d)(2) tolls the interval between a state court's denial of post-conviction relief and the *timely* filing of an application seeking appellate review of that denial also defeats Congress' intent. Although this approach results in perhaps less extreme problems than tolling prior to untimely filings, it still fails to give full effect to the federal one-year limitations period and is unsupported by § 2244(d)(2)'s language. The delays created by these interpretations of § 2244(d)(2) harm the States because the longer the delay is before federal habeas review begins, the greater the danger is

that evidence will become stale, citizens' confidence in the States' judicial systems will decrease, and the States and victims of crime will be left with little assurance that a criminal case has really ended.

ARGUMENT

NO "PROPERLY FILED APPLICATION" IS "PENDING" DURING THE INTERVAL BETWEEN A STATE COURT'S DENIAL OF POST-CONVICTION RELIEF AND THE FILING OF A "PROPERLY FILED APPLICATION" SEEKING APPELLATE REVIEW OF THAT DENIAL

A. Section 2244(d)(2)'s Language, Especially When Compared To Other Provisions Of AEDPA, Supports Amici's Construction Of The Term "Pending"

1. The starting point of statutory interpretation is the language of the statute itself. *Williams v. Taylor*, 529 U.S. 420, 431 (2000). The tolling provision contained in 28 U.S.C. § 2244(d)(2) provides that the one-year limitations period is tolled during the time in which a "properly filed application" for State post-conviction or other collateral review is "pending." This Court has already instructed that an "application" is "properly filed" for purposes of § 2244(d)(2) "when its delivery and acceptance are in compliance with the applicable laws and rules governing filings. These usually prescribe, for example, the form of the document, the time limits upon its delivery, the court and office in which it must be lodged, and the requisite filing fee." *Bennett*, 531 U.S. at 8 (footnote omitted). This Court has further explained that an "application" and a "claim" are not synonymous; instead, an

application contains claims. *Id.* at 9. In sum, this Court's decision in *Bennett* makes clear that the term "properly filed application" in § 2244(d)(2) refers to the actual document which a prisoner files in a state court seeking state post-conviction relief.[2]

At issue here is when such an application is "pending." *Black's Law Dictionary* defines "pending" as "[r]emaining undecided; awaiting decision." *Black's Law Dictionary* 1154 (7th ed. 1999). The prior edition of *Black's Law Dictionary* defined the term "pending" more extensively and supplied the following four definitions:

> [1] Begun, but not yet completed; during; before the conclusion of; prior to the completion of; unsettled; undetermined; in the process of settlement or adjustment. [2] Awaiting an occurrence or conclusion of action, period of continuance or indeterminacy. [3] Thus, an action or suit is "pending" from its inception until the rendition of final judgment. [4] An action is "pending" after it is commenced by either filing a complaint with the court or by the service of a summons.

Black's Law Dictionary 1134 (6th ed. 1990). The Ninth Circuit has in effect adopted the third definition, which appears to deem an "action" or "suit" to be "pending"

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[2] As this Court has recognized, the States use "diverse terminology" when referring to their various forms of state collateral review. *Duncan v. Walker*, 121 S. Ct. 2120, 2127 (2001). This brief uses the term "post-conviction" generically to encompass all forms of state collateral review that are available after a conviction.

during all the time periods between levels of review. *See also Griffith v. Kentucky*, 479 U.S. 314, 328 (1987) (referring to cases "pending on direct review" when determining the retroactive application of new rules of criminal procedure). The basic flaw with that reading is that this case does not address the question of when an "action," "suit," or "case" is "pending." At issue is when a "properly-filed application" is "pending." Only the first of the *Black's Law Dictionary* definitions (now reflected more concisely in the seventh edition) is relevant to that inquiry.

A "properly filed application" is "pending" when the court in which the application was "properly filed" has "not yet completed" action on it. As a matter of common sense and plain English, once that court has denied the application, the application is no longer pending because there is nothing left incomplete, unsettled, or undetermined with respect to the application. To be sure, a prisoner may appeal (or petition for appellate review of) that denial, and state law often provides a specified time period in which to file such an appeal or petition. But no "application" is pending between the date the application is denied and the date appellate review is sought. Not until the prisoner actually files a document seeking appellate review is an application (*i.e.*, a document requesting relief) pending again.[3] This understanding of "pending"

[3] In *Tinker v. Hanks*, 255 F.3d 444, 445-46 (7th Cir. 2001), the court held that an application for permission to file a second or successive state post-conviction proceeding is not a "properly filed application" within the meaning of § 2244(d)(2). Whether that decision was correct is not before this Court. Nor is the related question whether an application seeking permission to file an appeal from the denial of an application for post-conviction relief is a "properly filed application." Accordingly, this brief assumes *arguendo* that such an application is a "properly filed application" within the meaning of § 2244(d)(2).

"applications" dovetails with this Court's recognition in *Slack v. McDaniel*, 529 U.S. 473, 481 (2000), that "[w]hile an appeal is a continuation of the litigation started in the trial court, it is a distinct step" that can be described as "an appellate case."

2. The construction of § 2244(d)(2) adopted by the Ninth Circuit and advocated by respondent confuses the term "pending" with the concept of finality. Under their approach, any post-conviction proceeding that is not yet final remains "pending." As pointed out in *Robinson v. Ricks*, however, had Congress intended to equate the two concepts "it could readily have provided for tolling until state collateral review becomes 'final' by the conclusion of such review or the expiration of the time for seeking such review." 163 F. Supp. 2d at 168. Other provisions of AEDPA do just that, confirming that when Congress wanted a statutory provision to encompass the time from the first filing in state court until the end of the state appellate court review process, Congress knew how to state that concept explicitly.

Section 2263, for example, provides that the 180-day limitations period applicable to special habeas procedures in capital cases is tolled "from the date on which the first petition for postconviction review or other collateral relief is filed *until the final State court disposition of such petition.*" 28 U.S.C. § 2263(b)(2) (emphasis added). This language embodies the finality approach adopted by the Ninth Circuit and stands in

stark contrast to § 2244(d)(2), which includes no reference to the "final State court disposition." Congress had good reason to provide that tolling under § 2263(b)(2) encompasses the gaps between stages of state court post-conviction review, while tolling under § 2244(d)(2) does not, because the limitations period tolled by § 2263(b)(2) is considerably shorter than the limitations period tolled by § 2244(d)(2).

Similarly, 28 U.S.C. § 2244(d)(1)(A) states that the one-year limitations period begins running from "the date on which the judgment became final *by the conclusion of direct review or the expiration of the time for seeking such review*" (emphasis added). This language, too, is consistent with the Ninth Circuit's finality approach; however, § 2244(d)(2)'s language contains no mention of the review process, the time for seeking review, or the concept of finality.

"Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Duncan v. Walker*, 121 S. Ct. 2120, 2125 (2001) (quotations omitted). Congress' inclusion in § 2263(b)(2) and § 2244(d)(1)(A) of language which explicitly captures the time from the first filing in state court until the final state court disposition and the end of the state court review process, juxtaposed with Congress' exclusion of such language in § 2244(d)(2), shows that Congress did not intend § 2244(d)(2) to include for tolling purposes the interval between a state court's denial of post-conviction relief and the filing of a "properly filed application" in a higher state court. The Ninth

Circuit's reading of the tolling provision ignores these other provisions of AEDPA, and imports language into § 2244(d)(2) that simply is not there.[4]

B. Amici's Interpretation of § 2244(d)(2) Furthers The Limitations And Tolling Provisions' Objectives

1. Concerns about lengthy delays in the federal habeas process were one of the motivating forces that led to the enactment of AEDPA. As the influential Powell Report noted, the system in place prior to AEDPA "led to piecemeal and repetitious litigation, and years of delay between sentencing and a judicial resolution as to whether the sentence was permissible under the law. The resulting lack of finality undermine[d] public confidence in our criminal justice system." U.S. Judicial Conference, Ad Hoc Committee on Federal Habeas Corpus in Capital Cases, Committee Report, 1 (1989).[5] Frustration with these

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[4] If this Court were nonetheless to conclude that the time period between the denial of a motion for state post-conviction relief and the filing of a *timely* "properly filed application" seeking appellate review of that denial does toll the one-year limitations period, it would not follow that the same rule holds when the prisoner files an *untimely* "properly filed application." Although amici believe the term "pending" does not cover either time period, many courts of appeal have stretched the term to cover the time period before the filing of a timely application. But the term is stretched beyond the breaking point when it is extended to encompass times when no petition for review has yet been filed and the time for filing such a petition has expired.

[5] This report is commonly referred to as the "Powell Report" because the committee's chairman was Justice Powell.

delays in the federal habeas process prompted the introduction in Congress of more than 80 bills proposing a statute of limitations in the 10 years prior to AEDPA's enactment. *See Lonchar v. Thomas*, 517 U.S. 314, 333-34 (1996) (listing bills in the Appendix).

AEDPA's legislative history reveals that Congress enacted the limitations and tolling provisions in order to alleviate these delays in the federal habeas process while still respecting principles of comity and federalism. The Judiciary Committee Report accompanying H.R. 729, an immediate precursor of AEDPA in the same Congress as AEDPA and which contained limitations and tolling provisions that are identical in all material respects to those in AEDPA, expresses this legislative purpose as follows:

> Title I of the bill contains provisions designed to curb the abuse of the habeas corpus process, and particularly to address the problem of delay and repetitive litigation in capital cases. This proposal is the culmination of almost 15 years of work in Congress to achieve meaningful habeas corpus reforms.
>
> . . . .
>
> First, the bill is designed to reduce the abuse of habeas corpus that results from delayed and repetitive filings . . . . To help accomplish the first purpose, the bill imposes periods of limitation on federal habeas petitions filed under 28 U.S.C. section 2254 or motions filed under 28 U.S.C. section 2255 . . . . This reform will curb the lengthy delays in filing that now often occur in federal habeas corpus litigation, while preserving the availability of review

> when a prisoner diligently pursues state remedies and applies for federal habeas review in a timely manner.

H.R. Rep. No. 104-23, at 8-9 (1995). Similarly, the House Conference Report on AEDPA states that AEDPA

> incorporates reforms to curb the abuse of the statutory writ of habeas corpus, and to address the acute problems of unnecessary delay and abuse in capital cases. It sets a one year limitation on an application for a habeas writ and revises the procedures for consideration of a writ in federal court. It provides for the exhaustion of state remedies and requires deference to the determinations of state courts
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> . . . .

H.R. Conf. Rep. No. 104-518, at 111 (1996), *reprinted in* 1996 U.S.C.C.A.N. 924, 944.

Consistent with this legislative history, this Court has explained that Congress enacted AEDPA in order "to further the principles of comity, finality, and federalism." *Williams*, 529 U.S. at 436. The one-year limitations period "reduces the potential for delay on the road to finality by restricting the time that a prospective federal habeas petitioner has in which to seek federal habeas review," while the tolling provision "balances the interests served by the exhaustion requirement and the limitation period . . . . At the same time, the provision limits the harm to the interest in finality by according tolling effect only to 'properly filed application[s] for State post-conviction or other collateral review.'" *Walker*, 121 S. Ct. at 2128.

2. The construction of § 2244(d)(2) advocated herein maintains the balance of interests sought by Congress. Running the limitations period during the interval between a state court's denial of post-conviction relief and the filing of a "properly filed application" seeking appellate review of that denial speeds up the federal habeas process while still providing prisoners with ample opportunity to exhaust state remedies first. The 365 days granted by Congress to prisoners is perfectly sufficient to permit prisoners to prepare an initial post-conviction application and to prepare one, and sometimes two, petitions seeking review of denials of that application. As noted in *Robinson v. Ricks*, those many prisoners who do not file petitions for writs of certiorari with this Court gain an additional 90 days to exhaust their state-court remedies; and "appeals (or applications for leave to appeal) frequently take the form of a document seeking review based on the record below." 163 F. Supp. 2d at 169. In sum, a reasonably diligent prisoner should have little difficulty exhausting his state remedies and meeting the federal one-year limitations period, even when that period is not tolled during the "gaps."

Many courts of appeal have nevertheless construed § 2244(d)(2) to toll the limitations period between stages of the state post-conviction process, at least when the prisoners sought appellate review in a timely fashion.[6] Those decisions expressed two policy

[6] *See, e.g., Melancon v. Kaylo*, 259 F.3d 401, 406 (5th Cir. 2001); *Gibson v. Klinger*, 232 F.3d 799, 803-04 (10th Cir. 2000); *Fernandez v. Sternes*, 227 F.3d 977 (7th Cir. 2000); *Swartz v. Meyers*, 204 F.3d 417, 420-22 (3d Cir. 2000); *Peterson v. Gammon*, 200 F.3d 1202, 1204-05 (8th Cir. 2000); *Bennett v. Artuz*, 199 F.3d 116, 119-20 (2d Cir. 1999), *aff'd on other grounds*, 531 U.S. 4 (2000); *Taylor v. Lee*, 186 F.3d 557, 561 (4th Cir. 1999), *cert. denied*, 528 U.S. 1197 (2000).

concerns with adopting a rule that does not toll the "gaps" after a state court's denial of post-conviction relief and before the filing of a "properly filed application" in a higher state court. Such a rule, they stated, would (1) undermine comity by preventing prisoners from exhausting their state remedies before proceeding to federal court, and/or (2) unleash a flood of protective federal filings. Both concerns are misplaced.

The previous discussion rebuts the first concern. Only prisoners who wait to begin the state post-conviction review process until almost a year has passed will have any difficulty exhausting their state remedies before filing timely federal habeas petitions. This situation, however, is one of the prisoners' own making, and does not justify reading language into the tolling provision that is not there. Take, for example, a prisoner who waits 120 days after the end of direct review before filing his state post-conviction relief application, waits 60 days after that application is denied before appealing to the intermediate appellate court, and then waits 60 days after his appeal is denied before petitioning for review to the state's highest court. Under amici's construction of § 2244(d)(2), the prisoner, having exhausted his state court remedies, still has 125 days to spare before he must file his federal habeas corpus petition.

Turning to the second concern, one can expect *fewer* protective federal habeas filings if this Court adopts amici's position. Uncertainty is the driving force behind protective filings. A prisoner who is pursuing state post-conviction relief but is not certain whether the federal limitations period is running may opt to file a federal habeas petition to guard against the risk of losing his federal habeas claims. The clearer and simpler the tolling rules, the less reason prisoners have to file such duplicative actions. The rule that the limitations period is not tolled after a state court's denial of post-conviction relief and prior to the filing of a "properly filed application" seeking appellate review of that denial is simple to understand and apply, thus decreasing the perceived need for protective federal filings.

C. The Ninth Circuit's Construction Of § 2244(d)(2) Undermines The Limitations And Tolling Provisions' Objectives

The Ninth Circuit's construction of § 2244(d)(2) skews the balance Congress sought to attain among finality, comity, and federalism by undervaluing Congress' goal of expediting the date on which federal habeas review must be sought. Under the Ninth Circuit's approach, the one-year limitations period is tolled by months or even years when no court actually has before it a prisoner's application for post-conviction relief. Each such month or year delays the date on which a prisoner must file his federal habeas petition, thereby frustrating Congress' desire to speed up the process.

1. The Ninth Circuit alone among the courts of appeal to have addressed the issue would toll the limitations period during the entire interval between a state court's denial of post-conviction relief and the filing of an untimely, but still "properly filed," application seeking appellate review of that denial. *Compare* Pet. App. A 10-13 *with Fernandez v. Sternes*, 227 F.3d 977, 980-81 (7th Cir. 2000) (declining to find tolled the eleven months between the state court of appeals' denial of relief and the prisoner's filing of a motion for permission to file a late petition for leave to appeal, which the Illinois Supreme Court granted); *Gibson v. Klinger*, 232 F.3d 799, 806-07 (10th Cir. 2000). This unique Ninth Circuit rule opens the door to exceedingly lengthy periods of tolling. As Judge Easterbrook observed,

> Under the majority's approach in *Saffold*, if a prisoner let ten years pass before seeking a discretionary writ from the state's highest court, that entire period would be excluded under § 2244(d)(2) as long as the state court denied the belated request on the merits. That implausible understanding of § 2244(d)(2) would sap the federal statute of limitations of much of its effect.

Fernandez, 227 F.3d at 980. The Ninth Circuit's recent decision in *Welch*, 267 F.3d 1013, holding that the limitations period was tolled during another prisoner's delay of over four years, confirms those fears.

The Ninth Circuit, with support from its sister circuits, has also held that the limitations period is tolled during the entire interval between a state court's denial of post-conviction relief and the filing of a *timely*

"properly filed" application seeking appellate review of that denial. *See Nino v. Galaza*, 183 F.3d 1003. *See also* cases cited in note 6 above. Under this view, for example, an appeal filed on the 30th and final day allotted by state law would toll the limitations period for the entire 30 days, even though no application was pending for the first 29 of those days. Although this rule perhaps does not create problems as extreme as those created by the Ninth Circuit's rule regarding *untimely* applications, it still fails to give full effect to the federal one-year limitations period. Moreover, in States in which the time limit on seeking appellate review of a court's denial of post-conviction relief is that the prisoner must do so within a "reasonable" time, the delays could be quite lengthy. *See, e.g.*, N.C. R. App. P. 21(c) (2001). Furthermore, as demonstrated in Section A above, this rule is unsupported by § 2244(d)(2)'s language.

2. This Court has recognized that allowing the federal courts to step into a state criminal case can impact both federalism and comity. *See Engle v. Isaac*, 456 U.S. 107, 128 (1982) ("Federal intrusions into state criminal trials frustrate both the States' sovereign power to punish offenders and their good-faith attempts to honor constitutional rights."). The longer the gap between the conviction and the federal intervention, the greater the offense to the States' dignitary interests and the greater the practical problems. Lengthy delays before federal review rob victims of the comfort of knowing that they will not have to appear in court again or see the prisoners' convictions be overturned. Such delays also "tend to undermine confidence in the integrity of our

procedures." *Custis v. United States*, 511 U.S. 485, 497 (1994) (quotation omitted).

Moreover, one danger of federal habeas corpus is that "[p]assage of time, erosion of memory, and dispersion of witnesses may render retrial difficult, even impossible." *Engle*, 456 U.S. at 127-28. The same problems would arise at evidentiary hearings ordered by federal district courts years after conviction. *Cf. Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945) (explaining that purpose of statutes of limitations is to "spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost"). The Ninth Circuit's rule exacerbates these problems by allowing the federal courts to intercede in state criminal cases many years after the completion of direct review. This approach thwarts the purpose of AEDPA's limitations and tolling provisions, and leaves the States and victims with very little assurance that a criminal case has truly reached its conclusion.

CONCLUSION

For the foregoing reasons, the judgment of the Ninth Circuit should be reversed.

Respectfully submitted,

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